

(2015) 12 CAL CK 0061

In the Calcutta High Court

Case No : F.M.A.T. 1380 of 2015 and CAN 12041 of 2015

Naba Nagari Co-operative Housing Society Ltd.

APPELLANT

Vs

R/C Bysack and Others

RESPONDENT

Date of Decision : 22-12-2015

Acts Referred:

Citation : (2015) 12 CAL CK 0061

Hon'ble Judges : Jyotirmay Bhattacharya and Ishan Chandra Das, JJ.

Bench : Division Bench

Advocate : S. Banerjee, Rishav Banerjee, Shayak Chakraborty and Arka Ganguli, for the Appellant; S.P. Roy Chowdhury, Sukanta Chakraborty, Trinath Gangopadhyay and Anindya Halder, for the Respondent

Final Decision : Disposed Off

Judgement

Jyotirmay Bhattacharya, J.—Leave is granted to the learned advocate-on-record of the appellant to rectify the defect in the memorandum of appeal in terms of the report of the Stamp Reporter.

2. This First Miscellaneous Appeal is directed against an order being No. 2 dated 26th November, 2015 passed by the Learned Civil (Senior Division) at Barasat in Title Suit No. 1306 of 2015 at the instance of the defendant No. 1/appellant.

3. Let us now consider the merit of this impugned order for ascertaining as to whether the appeal is needed to be admitted for hearing or not.

4. By the impugned order, the plaintiff's application for injunction was allowed. Both the plaintiff and the defendant were directed to maintain status quo with regard to further construction in respect of the "A" schedule property of the injunction application till 22nd December, 2015.

5. Let us now consider as to how far the Learned Trial Judge was justified in passing the said order in the facts of the present case.

6. We are still at the stage of hearing of the plaintiff's application for injunction

at the ad interim stage. As such, we cannot consider any other document save and except the pleadings made out by the plaintiff in his plaint as well as in the injunction application and the documents which were made part of those pleadings. On perusal of such pleadings of the plaintiff, we find that the plaintiff claims that the plaintiff was appointed as a contractor by the defendant No. 1 for raising of a G+4 building on the land belonging to the defendant No. 1 in pursuance of an agreement entered into between the plaintiff and the defendant No. 1 on 17th November, 2014. Pursuant to a work order issued by the Chairman of the defendant No. 1 on 17th November, 2014, the plaintiff started raising construction of the said multi-storied building on "A" schedule property.

7. Being dissatisfied with the progress of the work of construction which the plaintiff made in the said property, the Secretary of the defendant No. 1 society terminated the contract vide his letter dated 25th February, 2015 with immediate effect. Subsequently, dispute between the parties was settled and the plaintiff was again allowed to resume his work. The plaintiff claims that the constructional work has progressed a lot and he has invested huge inherent cost in laying down the foundation and for raising construction upto plinth level by making provision for the ground floor structure casting which is the base of entire building structure.

8. The plaintiff further claims that he has stacked huge building materials over the building site. The plaintiff also claims that the defendant No. 1 is still liable to pay a sum of Rs. 33,20,972/- towards the costs of construction which has already been made by the plaintiff in the said property. The plaintiff further claims that the said claim amount is inclusive of the value of the building materials stacked by the plaintiff over the suit property. Since the agreement and/or the work order has been subsequently terminated by the defendant No. 1 on 29th May, 2015, the instant suit was filed by the plaintiff seeking declaration that the termination of the agreement is not legal and the said agreement is still subsisting between the parties. The plaintiff has also made a monetary claim for recovery of the cost of construction which the plaintiff has incurred for raising construction in the suit property which is inclusive of the cost of the materials which was stacked by the plaintiff at the building site. Other incidental reliefs have also been claimed by the plaintiff in the said suit.

9. After filing the said suit, the plaintiff has also filed an application praying for temporary injunction for restraining the respondents and its men, agents, servants and associates from misappropriating the articles, belongings and other building materials of the plaintiff/petitioner kept in the site and/or the suit premises, the detail of which is described in the Schedule "B" therein and also from creating any sorts of disturbance and/or hindrance in the peaceful constructional work by the plaintiff/petitioner and its men, agents and masonries in the suit premises morefully described in Schedule "A" in the plaint. Temporary injunction was also sought for restraining the respondents and their men, agents, servants and associates from raising any construction work over the properties

either by itself or through any other in the suit premises mentioned in Schedule "A" of the plaint. Ad interim order of injunction in similar terms was also prayed for by the plaintiff in the said application. The impugned order was passed by the Learned Trial Judge on the said application of the plaintiff/petitioner.

10. Mr. Banerjee, learned advocate appearing for the defendant No. 1/appellant submits that the reasons for which the injunction was granted by the Learned Trial Judge, cannot be supported. He has pointed out from the impugned order that the Learned Trial Judge passed the said ad interim order of injunction in the form of status quo for avoiding multiplicity of proceedings and also for avoiding further complication in this matter.

11. He submits that these are not the tests for grant of ad interim injunction in view of the decision of the Hon''ble Supreme Court in the case of Shiv Kumar Chadha and Others Vs. Municipal Corporation of Delhi and Others, .

12. By referring to the said judgment of the Hon''ble Supreme Court, Mr. Banerjee submits that the Court has no jurisdiction, even to pass any ad interim order of injunction, unless the Court records its satisfaction about the fulfilment of these three tests i.e. i) existence of a prima facie case ii) balance of convenience and inconvenience of the parties and iii) irreparable loss and injury.

13. According to Mr. Banerjee since the Learned Trial Judge, while passing ad interim order of injunction in the form of status quo did not record his satisfaction with regard to the fulfilment of those three tests, the impugned order cannot be maintained by this Court.

14. He further submits that the Learned Trial Judge should have refused to pass an ad interim order of injunction as the plaintiff did not approach the Learned Trial Judge for such interim relief, immediately after termination of the contract.

15. Mr. Banerjee further submits that even the suit, as it is framed, is also not maintainable and as such, the Learned Trial Judge ought not to have passed any order granting any interim relief in such a suit.

16. Mr. Banerjee thus, invites us to vacate the interim order of injunction which is impugned in this appeal.

17. Mr. Roy Chowdhury, learned senior advocate appearing for the respondent No. 1 has refuted such contention of Mr. Banerjee, by submitting that even if the Learned Trial Judge did not record his satisfaction as to the fulfilment of those three tests in the impugned order but still then this Court while considering this appeal, is not helpless to maintain such impugned order by supplying the reasons for supporting the impugned order.

18. Mr. Roy Chowdhury has contended before us that a strong prima facie case has been made out by the plaintiff in the said suit as well as in injunction application. He submits that pursuant to the contract a work order was issued by the defendant No. 1 inviting his client to raise construction of (G+4) multi-

storied building over the suit property and acting on the said work order, his client, has raised some construction at the building site and has also stacked huge building materials therein for raising further construction.

19. Mr. Roy Chowdhury has also pointed out that the defendant No. 1 is in the habit of terminating the contract for no good reason and again subsequently permits the plaintiff to resume his work.

20. Mr. Roy Chowdhury further points out that at different stages of the said construction, the defendant No. 1 was invited by his client to verify the quality of the work which was done by his client and also demanded release of fund which his client is entitled to, as per contract, for raising such construction.

21. Mr. Roy Chowdhury further points out that due to non-co-operation of the defendant No. 1, the plaintiff could not further progress the work of construction.

22. He further submits that if at this stage, the work order is terminated and the rest part of the construction is allowed to be completed by engaging any other contractor then it will not be possible for his client to substantiate his monetary claim made in the suit. He further submits that the other reliefs which the plaintiff may be ultimately found to be entitled, may not be given to the plaintiff, even if the plaintiff ultimately succeeds in proving his claim that the termination of the contract was illegal. He, thus, contends that the learned Trial Judge was justified in passing the impugned order.

23. In reply to such contention of Mr. Roy Chowdhury, Mr. Banerjee submits that if the construction is not allowed to be completed then the entire project will be delayed and his client will suffer irreparable loss and injury. He, further, submits that for wrongful termination of the contract, the plaintiff may at best claim damages. He thus, contends that when the loss which the plaintiff is likely to suffer, can be compensated by money value, injunction should not have been passed by the learned Trial Court. He however contends that if the Court directs, then his client may deposit some amount to secure the monetary claim of the plaintiff provided his client is permitted to complete the incomplete construction immediately.

24. Let us now consider as to how far the learned Trial Judge was justified in passing the impugned order in the facts of the instant case.

25. From the pleadings of the plaintiff, we find that pursuant to the contract entered into between the parties, an work order was issued in favour of the plaintiff and in pursuance thereof, the plaintiff has raised some construction over the suit property. Termination of the contract in the midst of the project and engagement of another contractor for completion of the remaining part of the work will certainly create a problem for the plaintiff to establish his monetary claim which he has made in the said suit, inasmuch as, if the remaining part of the contraction is allowed to be completed by the other contractor without ascertaining the extent of the construction which the plaintiff has actually made

therein, then it will be difficult for the plaintiff to prove as to how far he constructed and how much money he has spent for such construction and what will be his entitlement towards construction which he has raised so far in the suit property pursuant to the contract.

26. We, however, agree with the contention of Mr. Banerjee that even if it is ultimately found that the contract was wrongfully terminated by the defendant No. 1, then the plaintiff may be compensated by way of damages. As such, injunction may not be the appropriate relief in such a suit. However, keeping in mind the difficulties which the plaintiff may ultimately face in proving his monetary claim made in the said suit, we feel that at least status-quo with regard to such construction should be maintained by the parties until the extent of the constructional work which was done by the plaintiff so far in the said property and the valuation of the building material, stacked by the plaintiff at the building site are ascertained by the expert.

27. Under such circumstances, we direct for continuation of interim order of status-quo passed by the learned Trial Judge till the disposal of the plaintiff's application for temporary injunction.

28. Leave is granted to the defendants to file objection to the plaintiff's application for temporary injunction within two weeks after reopening of the Christmas vacation, reply, if any, be filed by the plaintiff within two weeks thereafter.

29. The learned Trial Judge is requested to dispose of the plaintiff's application for temporary injunction as early as possible, but preferably by the end of March, 2016 without granting any unnecessary adjournment to any of the parties.

30. It is also made clear that the learned Trial Judge while considering the plaintiff's application for temporary injunction will dispose of the same in his own wisdom and in accordance with law without being influenced by any of the observations made hereinabove as such observations are made only for the purpose of disposal of the plaintiff's application for ad interim injunction.

31. It is also made clear that in the event the defendants raise any dispute with regard to the maintainability of the suit in their objection, the learned Trial Judge will consider the said objection while disposing of the plaintiff's application for temporary injunction.

32. Both the appeal and the application are, thus, disposed of.

33. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties as early as possible.

Ishan Chandra Das, J.

I agree.